

Message Text

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ACTION ARA-10

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C O N F I D E N T I A L LIMA 6499

E.O. 11652: GDS

TAGS: EINV, EMIN, PFOR, PE, US

SUBJECT: MARCONA NATIONALIZATION - MARCONA SUITS IN
PERUVIAN COURTS

REF: A. LIMA 6498 B. LIMA 6129

1. JAMES COMPTON TOLD THE AMBASSADOR AUGUST 11 THAT HE HAS BEEN INSTRUCTED BY MARCONA HEADQUARTERS IN SAN FRANCISCO TO EXAMINE THE POSSIBILITY OF BRINGING THREE SUITS IN PERUVIAN COURTS AGAINST THE GOP. THE FIRST TWO WOULD RELATE TO ILLEGAL OFFLOADING OF CARGO TO WHICH MARCONA RIGHTFULLY HAS OWNERSHIP (SEE REF A), AND THE THIRD RELATES TO THE DEPLETION ALLOWANCE ISSUE (REF B).

2. COMPTON EXPLAINED THAT MARCONA HAD AGREED TO PAY THE \$19 MILLION FOR THE "ILLEGAL" DEPLETION ALLOWANCE. HOWEVER, MARCONA, DURING THE LAST TWO YEARS, HAD DECIDED NOT TO SUE MINEROPERU OVER THIS ISSUE BECAUSE OF ITS DESIRE TO WORK OUT A NEGOTIATED SETTLEMENT WITH THE GOP. NOW, HOWEVER, MARCONA HEADQUARTERS HAS DECIDED TO HAVE COMPTON INVESTIGATE WITH MARCONA'S PERUVIAN LAWYERS, ESTUDIO OLAECHEA, THE POSSIBILITY OF SUING MINEROPERU, AS THE LEGAL SUCCESSOR OF MINEROPERU, SINCE ACCORDING TO COMPTON
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THE DEPLETION ALLOWANCE IS LEGALLY DUE TO MARCONA ND IS

CARRIED ON MINEROPERU'S BOOKS AS A RECEIVABLE. COMPTON SAID THAT MARCONA HEADQUARTERS WISHES TO "GO ON RECORD" MORE "IN SORROW THAN IN ANGER" OVER THIS ISSUE BUT DID NOT WISH TO LET IT PASS WITHOUT CONSIDERING THIS STEP. COMPTON SAID THAT IT WILL TAKE TWO OR THREE DAYS FOR ESTUDIO OLAECHEA TO PREPARE THE PAPERS FOR THIS CASE.

3. THE AMBASSADOR EMPHASIZED THAT IT MIGHT BE MORE PROPITIOUS TO WAIT A COUPLE OF DAYS TO SEE WHERE OUR DIPLOMATIC INITIATIVE LEADS BEFORE INSTITUTING LEGAL ACTION SINCE SUCH STEPS COULD SOUR THE ATMOSPHERE AT THE INITIAL STAGES OF DISCUSSIONS. COMPTON AGREED THAT THIS COULD WELL BE THE CASE, BUT DID SAY THAT HE WOULD INVESTIGATE THE LEGAL STEPS WITH THE LAWYERS SINCE HEADQUARTERS WANTS THIS OPTION OPEN TO IT.

4. COMMENT: WE SEE PROBLEMS IN STARTING LEGAL CAMPAIGN AGAINST HIERROPERU EVEN BEFORE GOP-MARCONA DISCUSSIONS BEGIN, BUT AGREE WITH COMPTON THAT THE COMPANY SHOULD BE PREPARED. WE BELIEVE THAT LEGAL ACTION COULD BE HELD OFF AND THAT MARCONA HEADQUARTERS (AND COMPTON) WOULD AGREE TO DO SO IF THE GOP GETS ITS DUCKS IN ORDER AND STARTS DISCUSSIONS PROMPTLY, AS GARCIA BEDOYA HAS SAID IT WOULD.
DEAN

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